S.B. Civil Writ Petition No.1729/2002
Jawara Ram & Ors. Vs. State of Rajasthan & Ors.

Date of Order : 09/02/2005

HON'BLE MR.JUSTICE PRAKASH TATIA

Mr. R.S. Saluja, for the petitioners.
Mr. B.N. Kalla, for respondents No. 5 to 8.
Mr. L.R. Upadhyay, for the State.

Heard learned counsel for the parties.

The petitioners are aggrieved against the order dated 27.9.2004 by which the Board of Revenue passed the order in the revision petition preferred by the petitioners/petitioners' predecessor.

Brief facts of the case are that the petitioners are claiming themselves to be the purchaser of part of the land of Khasra No.163, 224 and 658 measuring 604 bighas. It was said that the said land was in joint khatedari of one Tiku Ram and Hira Lal, both died before purchase of the land by the petitioners. It is said that after the death of Tiku Ram, his ½ share devolved upon her widow Smt. Bagtu. It is not in dispute that she had two minor daughters. Smt. Bagtu sold her 1/3 share in favour of the petitioners. The petitioners sought mutation on the basis of the said sale-deed executed by Smt. Bagtu. The mutation was rejected by the Panchayat on the

ground that the land was not partitioned as per law. The petitioners preferred appeal against the order of the Gram Panchayat before Additional Collector, Barmer who accepted the appeal vide order dated 23.6.1989.

Aggrieved against the order dated 23.6.1989, the appeal was preferred by the aggrieved party and the learned Divisional Commissioner, Jodhpur allowed the appeal vide order dated 23.6.1989 and set aside the order of the Additional Collector.

The petitioners preferred revision petition before the Board of Revenue, that too was substantially dismissed but partially accepted vide order dated 27.9.1994.

It appears from the facts mentioned above and in view of the facts that there are serious dispute about the right of Bagtu who alienate the property and the rights of the minor daughters of Smt. Bagtu and her husband, therefore, all these questions can be decided in a properly filed suit and not in the mutation proceedings. The Board of Revenue was conscious of this fact and avoided to decide the number of issues which according to Board of Revenue, no finding can be given in the mutation proceedings. It is not in dispute that the property in question alleged to have been partitioned before sale to the petitioners, have not been accepted by the State under

Section 53 of the Rajasthan Tenancy Act. Therefore also, no useful purpose can be served for interfering in any of the order passed by the courts below. As mere by mutation, none of the party can get right title or interest in the property and therefore also, it may be proper to establish the rights in properly filed suit.

In view of the above, the writ petition of the petitioners is dismissed. However, it is observed that any finding recorded in the impugned orders about the rights of the parties succession and devolution shall not come in the way of the parties in the trial of the suit.

[Prakash Tatia],J.

Pd.